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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:CORP:BR2
PLR-139424-09

Date:
December 01, 2009

LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Accounting Firm =

Dear :

This letter responds to your request for a ruling, dated August 19, 2009, submitted by your authorized representative, requesting a determination under Treas. Reg. § 1.1502-75(b)(2), that Sub 1, Sub 2, and Sub 3 have each joined in the making of the initial consolidated Federal income tax return filed by Parent for the taxable year ending on Date 4. The information submitted in that request and in later correspondence is summarized below.

SUMMARY OF FACTS

Parent is a State A corporation incorporated on Date 1; it is a calendar year taxpayer that uses the accrual method of accounting. Parent wholly owns all of the stock of Sub 1, Sub 2, and Sub 3 (collectively, the "Subsidiaries"). From its incorporation on Date 1 through Date 2, Parent was a Subchapter S corporation. During this period, Parent either organized or acquired the stock of the Subsidiaries. Each of the Subsidiaries was treated as a Qualified Subchapter S Subsidiary ("QSub") from the date of its organization or acquisition by Parent. On Date 3, Parent's election to be treated as a Subchapter S corporation terminated by operation of law, and each of the elections treating the Subsidiaries as QSubs also terminated.

Parent retained Accounting Firm to prepare its tax return for the short taxable year beginning on Date 3 and ending on Date 4. Parent informed Accounting Firm that Parent and the Subsidiaries intended to file a consolidated Federal income tax return. The return for the taxable year ending on Date 4 was timely filed and included the income and deductions for Parent and each of the Subsidiaries for the entire short taxable year. The return also included a Form 851 (Affiliations Schedule) that identified each of the Subsidiaries.

On or about Date 5, it was discovered that Form 1122 (Authorization and Consent of Subsidiary Corporation to Be Included in a Consolidated Return) for each of the Subsidiaries was not filed with Parent's tax return for the taxable year ending on Date 4. The statute of limitations under section 6501(a) of the Internal Revenue Code has not expired for the return filed for the taxable year ending on Date 4.

REPRESENTATIONS

Parent has made the following representations:

- (a) Except for the failure to timely file Forms 1122, Parent and the Subsidiaries were eligible to file a consolidated Federal income tax return for the taxable year ending on Date 4.
- (b) The income and deductions of each of the Subsidiaries for the taxable year ending on Date 4, and all taxable years thereafter, were included in the returns filed by Parent as parent of the consolidated group.
- (c) The Subsidiaries did not file separate tax returns for the taxable year ending on Date 4, or for any taxable years thereafter.
- (d) The Subsidiaries were each included in the Form 851 (Affiliations Schedule) attached to the return for the taxable year ending on Date 4, and for all taxable years thereafter.

APPLICABLE LAW

Section 1.1502-75(a)(1) of the Income Tax Regulations provides, in part, that an affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents, in the manner provided in Treas. Reg. § 1.1502-75(b), to the regulations under section 1502.

With regard to the consent of a corporation for a group's first consolidated year, Treas. Reg. § 1.1502-75(b)(1) provides, as a general rule, that the consent of a corporation is made by such corporation joining in the making of the consolidated return for such year and that a corporation is deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in Treas. Reg. § 1.1502-75(h)(2).

Treas. Reg. § 1.1502-75(h)(2) provides that if, under the provisions of Treas. Reg. § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. The regulation provides rules for properly executing Forms 1122, and also provides that a Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Treas. Reg. § 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has nevertheless joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include the following: (i) whether or not the income and deductions of the

member for such taxable year were included in the consolidated return; (ii) whether or not a separate return was filed by the member for that taxable year; and (iii) whether or not the member was included in the affiliations schedule, Form 851, for such taxable year.

Where the Commissioner, under the facts and circumstances, determines that the member has joined in the making of the consolidated return, such member will be treated, for purposes of Treas. Reg. § 1.1502-75(h)(2), as if it had filed a Form 1122 for such year. Treas. Reg. § 1.1502-75(b)(2).

RULING

Based solely on the information submitted and representations made, we rule that each of the Subsidiaries is treated, under Treas. Reg. § 1.1502-75(h)(2), as if it had filed a Form 1122 with the Federal income tax return filed by Parent for the taxable year ending on Date 4. Treas. Reg. § 1.1502-75(b)(2).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above ruling. In particular, we express no opinion regarding whether Parent's election to be treated as a Subchapter S corporation terminated, or whether the elections to treat each of the Subsidiaries as QSubs terminated.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the taxpayer's ruling request. Verification of this material may be required as part of the audit process.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to the Federal income tax return to which it is relevant. Alternatively, if Parent files its return electronically, this requirement may be satisfied by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Frances L. Kelly
Assistant Branch Chief, Branch 2
Office of Associate Chief Counsel
(Corporate)